

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

COLUMBIA MEDICAL SYSTEMS, INC.,  
PHU NGUYEN, TUYET NGUYEN, and  
SESS MERKE,

Defendants.

No. CR05-270RSL

ORDER GRANTING MOTION TO  
STAY RESTITUTION

This matter comes before the Court on defendant Sess Merke's "Motion to Stay Sentence of Restitution Pending Appeal" (Dkt. #250). On September 15, 2006, the Court sentenced Mr. Merke and entered a judgment of conviction, which Mr. Merke subsequently appealed. The Court then granted Mr. Merke's request to be released on bond pending appeal. The Government, however, has requested that Mr. Merke begin making payments toward his restitution obligations prior to the resolution of his appeal. Mr. Merke now seeks, under Federal Rule of Criminal Procedure 38, a stay of his sentence of restitution pending appeal.

The Court concludes that a stay of Mr. Merke's sentence of restitution is appropriate. Mr. Merke's appeal raises substantial questions of law and fact and has not been pursued simply for the purpose of delay. Further, a stay would impose minimal hardship on the victim, because even in the absence of a stay the victim will receive no payments until after the appeal is resolved. During the pendency of his appeal, Mr. Merke should be permitted to direct his

1 limited financial resources to supporting his family. The Court therefore GRANTS defendant  
2 Merke's motion to stay his sentence of restitution pending appeal (Dkt. #250).

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4 DATED this 17<sup>th</sup> day of January, 2007.

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7 Robert S. Lasnik  
8 United States District Judge  
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